



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2021-0483; FRL-9158-01-R2]

Approval of Air Quality Implementation Plans; New York; Revision to 6 NYCRR Part 205, Architectural and Industrial Maintenance Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution for volatile organic compounds (VOC). The proposed SIP revision consists of amendments to regulations outlined within New York's Codes, Rules, and Regulations that implement control measures for architectural and industrial maintenance coatings. The intended effect of this action is to approve control strategies which will result in VOC emission reductions that will help attain and maintain the national ambient air quality standards for ozone. These actions are being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-0483, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Linda Longo, at (212) 637-3356, or by email at longo.linda@epa.gov, or by mail at Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866.

SUPPLEMENTARY INFORMATION:

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I. Background

Ozone Requirements

In March 2008, the EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone to 0.075 parts per million (ppm) averaged over an 8-hour time frame (2008 8-hour Ozone Standard). *See* 73 FR 16435 (March 27, 2008). In October 2015, the EPA revised this standard to 0.070 ppm averaged over an 8-hour time frame (2015 8-hour Ozone Standard). *See* 80 FR 65291 (October 26, 2015).

On May 21, 2012, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour Ozone Standard, which became

effective on July 20, 2012. *See* 77 FR 30160 (May 21, 2012). The New York-Northern New Jersey-Long Island-Connecticut metropolitan area (NYMA) was designated by the EPA as a “marginal” nonattainment area for the 2008 ozone NAAQS.¹ In 2016, the EPA determined that the NYMA did not attain the 2008 ozone standard by the July 20, 2015 attainment date and was reclassified from a “marginal” to a “moderate” nonattainment area. *See* 81 FR 26697 (May 4, 2016). SIPs for “moderate” nonattainment areas were due by January 1, 2017. *See id.* On April 30, 2018, the EPA finalized its attainment/nonattainment designations for most areas across the country as to the 2015 8-hour Ozone Standard, in which the NYMA was designated by the EPA as a “moderate” nonattainment area. *See* 83 FR 25776 (June 4, 2018). On September 23, 2019, the EPA reclassified the NYMA to “serious” nonattainment as to the 2008 8-hour Ozone Standard. *See* 84 FR 44238 (August 23, 2019). The serious area attainment date and the deadline for Reasonably Available Control Technology measures not tied to attainment was July 20, 2021. *See id.*

II. What was included in New York’s submission for part 205?

On October 15, 2020, New York submitted a proposed SIP revision to title 6 of the New York Codes, Rules, and Regulations (6 NYCRR), part 205, “Architectural and Industrial Maintenance Coatings.” New York also submitted attendant revisions to Part 200, Section 200.9, “General Provisions, Reference materials.” The State’s submission is complete. The proposed rulemaking applies statewide to any person who supplies, sells, offers for sale, or manufacturers any architectural coating for use within the State of New York, and any person who applies or solicits the application of any architectural coating within the State of New York.

III. What is the EPA’s evaluation of part 205?

¹ The New York portion of the NYMA is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland, and the Shinnecock Indian Nation. *See* 40 CFR 81.333.

The most recent federally approved revision of 6 NYCRR part 205, “Architectural and Industrial Maintenance coatings” regulations was published in the Federal Register on March 8, 2012, as an attendant revision to avoid redundancy and conflict of the asphalt paving and coating provisions included in the new part 241, “Asphalt Pavement and Asphalt Based Surface Coating.” *See* 70 FR 13974 (March 8, 2012). The current proposed rulemaking submitted by the State on October 15, 2020, is intended to be consistent with the Ozone Transport Region (OTR) Model Rule for Architectural and Industrial Maintenance (AIM) coatings (OTR Model Rule for AIM)² by reducing the VOC limit for 12 coating categories, creating VOC limits for 12 additional coating categories, eliminating 15 coating categories without relaxation of the regulation, and narrowing the exemption previously provided to coatings sold in one-liter (or quart-size) containers, referred to as the “quart exemption.” *See* “Revisions to the quart exemption for bundling of quart-sized containers,” below, for further details.

OTC Model Rule and neighboring states

The OTC Model Rule for AIM was developed by the Ozone Transport Commission through stakeholder involvement to address the needs of ozone transport states. The OTR Model Rule for AIM was amended in 2011 to address VOC content limits based on the California Air Resource Board’s (CARB) Suggested Control Measures (SCM) for architectural coatings. The EPA reviewed New York State’s October 15, 2020, SIP submission and confirms its consistency with the OTR Model Rule for AIM. Furthermore, neighboring states Connecticut (CT), New Jersey (NJ), and Pennsylvania (PA), also followed the OTC Model Rule for AIM and have equivalent provisions, VOC limits, and measures. For example, the NJ, PA, and CT floor coating category content limit is 250 grams of VOC/liter, compared to the New York State Department of Environmental Law and Conservation’s (NYSDEC) floor coatings

² The EPA provides the OTC Model Rule for AIM in the docket.

category of 100 grams of VOC/liter; NJ's exemptions apply to contact adhesives in containers with a net volume of one gallon or less, compared to New York's retention of the one-liter-or-less exemption except for floor coatings, along with PA and CT.

Reduced VOC limits

The proposed revision includes reduced VOC limits on the following coating categories: (1) Flat coatings, whose limit was reduced from 100 to 50 grams of VOC/liter; (2) non-flat coatings, whose limit was reduced from 150 to 100 grams of VOC/liter; (3) non-flat high gloss coatings, whose limit was reduced from 250 to 150 grams of VOC/liter; (4) bituminous roof coatings, whose limit was reduced from 300 to 270 grams of VOC/liter; (5) dry fog coatings, whose limit was reduced from 400 to 150 grams of VOC/liter; (6) floor coatings, whose limit was reduced from 250 to 100 grams of VOC/liter; (7) industrial maintenance coatings, whose limit was reduced from 340 to 250 grams of VOC/liter; (8) mastic texture coatings, whose limit was reduced from 300 to 100 grams of VOC/liter; (9) primers, sealers, and undercoaters, whose limit was reduced from 200 to 100 grams of VOC/liter; (10) rust preventative coatings, whose limit was reduced from 400 to 250 grams of VOC/liter; (11) specialty primers, sealers, and undercoaters, whose limit was reduced from 350 to 100 grams of VOC/liter; and (12) traffic marking coatings, whose limit was reduced from 150 to 100 grams of VOC/liter.

Creation of new coating categories

The proposed revision includes the following new coating categories: (1) aluminum roof coating, with a limit of 450 grams of VOC/liter; (2) basement specialty coating, with a limit of 400 grams of VOC/liter; (3) concrete/masonry sealer, with a limit of 100 grams of VOC/liter; (4) conjugated oil varnish, with a limit of 450 grams of VOC/liter; (5) driveway sealers, with a limit of 50 grams of VOC/liter; (6) reactive penetrating sealer, with a limit of 350 grams of VOC/liter; (7) reactive penetrating carbonate stone sealer, with a limit of 500 grams of VOC/liter; (8) stone consolidate, with

a limit of 450 grams of VOC/liter; (9) tub and tile refinish, with a limit of 420 grams of VOC/liter; (10) waterproofing membranes, with a limit of 250 grams of VOC/liter; (11) wood coatings, with a limit of 275 grams of VOC/liter; and (12) Zinc-Rich Primer, with a limit of 340 grams of VOC/liter.

Elimination of coating categories

The proposed revision eliminates 15 coating categories without relaxation of the regulation because the VOC limit associated with the eliminated category is being absorbed by either a new or existing coating category: (1) antenna coatings (absorbed by industrial maintenance); (2) antifouling coatings (absorbed by industrial maintenance); (3) clear wood coatings/clear brushing lacquers (absorbed by wood coatings); (4) clear wood coatings/lacquers, including lacquer sanding sealers (absorbed by wood coatings); (5) clear wood coatings/sanding sealers, other than lacquer sanding sealers (absorbed by wood coatings); (6) clear wood coatings/varnishes (absorbed by wood coatings); (7) fire-retardant coatings/clear (absorbed by industrial maintenance); (8) fire-retardant coatings/opaque (absorbed by industrial maintenance); (9) flow coatings (absorbed by industrial maintenance); (10) quick-dry enamels (absorbed by flat, non-flat, and non-flat high gloss); (11) quick-dry primers, sealers, and undercoaters (absorbed by specialty primers, sealers, and undercoaters); (12) swimming pool repair and maintenance coatings (absorbed by swimming pool coatings); (13) temperature-indicator safety coatings (absorbed by industrial maintenance and concrete masonry sealer); (14) waterproofing sealers (absorbed by waterproofing membrane and basement specialty); and (15) waterproofing concrete/masonry sealers (absorbed by concrete masonry sealer and waterproofing membrane).

Revisions to the quart exemption for bundling of quart-sized containers

In the revised proposed part 205.1(b)(3), singular quart-sized containers continue to be exempt, but applicability of the regulation is expanded to include quart-sized

containers that are packaged together in a bundle. Under part 205.1(b)(3)(i), the bundling of coating kits is addressed. The purpose of a coating kit is to be sold and marketed as a unit, which implies that multiple containers with a volume of one liter or less will be combined into one container; as such, the bundling of quart-sized containers for the purpose of a coating kit is not exempt and will need to comply with part 205.

Accordingly, the proposed regulation addresses the concern that manufacturers and suppliers may circumvent the VOC limits in part 205 by selling the coatings in bundles of quart-sized containers inside a larger pail. The requirements for bundling quart-sized containers are expanded under part 205.1(b)(3)(i-iii), as follows: (1) under subpart (i), coating kits that typically are composed of multiple small containers, but are marketed as a single coating kit, must comply with part 205; (2) under subpart (ii), the use of a container that is not intended to hold a coating product is not allowed; and (3) under subpart (iii), floor coatings can be sold in any sized container and must comply with part 205.³ Part 205 contains a few examples where bundling is permitted, as follows: (1) shipping pallets containing multiple quart-sized containers that are not sold as one unit; (2) multiple quart-sized containers that are shipped together and then placed on the retail shelf to be sold separately; (3) instances in which the quart-sized containers are bundled into a unified package that is marketed as a coating kit and sold and used as a coating kit. Part 205 contains at least one example where bundling is not allowed, as follows: packaging coating (*e.g.*, paint) in small disposable juice-like containers and placing them inside a larger pail to be sold as one unit. This scenario is specifically addressed by part 205.1(b)(3)(ii), “packaging from which the coating cannot be applied,” because juice-like containers are not designed to hold coatings, since it is difficult, if not impossible, to dip

³ Floor coatings are commonly sold in quart-sized (one liter or less) containers. Any sized floor coating container must adhere to the VOC content limits under part 205.3(a), including all other part 205 requirements.

a paint brush into the container. Thus, excluding products contained in “packaging from which the coating cannot be applied” is intended to address potential circumvention of the regulation, which was raised as a concern in the public comments.

EPA review of State’s public comments

The State conducted public outreach and worked with AIM stakeholders for over two years prior to the part 205 proposed rulemaking amendment. The leading public concerns covered the sell-through provisions and clarification on bundling of quart-sized containers. The sell-through provisions are in place for part 205 to help minimize the potential impact on small businesses and allow manufacturers to sell products compliant with the current standard through May 1, 2023. Sell-through of AIM coatings refers to a coating that was manufactured prior to the effective date specified for that coating category and may be sold, supplied, or offered for sale until May 1, 2023, so long as the coating complies with standards in effect at the time the coating was manufactured. The State extended the sell-through date of AIM coatings to May 1, 2023, as recommended by commenters, to allow for the sell-through of AIM products for two years and four months from the compliance date for the revised VOC content limits under part 205.3(a). The AIM sell-through provision will also help minimize the environmental and economic impact of disposing potentially usable products on the shelves sooner than they may need to be disposed of if not sold. Regarding the concern around bundling of quart-sized containers, *see* above section titled, “Revisions to the quart exemption for bundling of quart-sized containers” for a complete explanation. The EPA reviewed the public comments and is satisfied with the State’s responses thereto.

IV. What is EPA’s evaluation of subpart 200?

The current proposed rulemaking includes attendant revisions to 6 NYCRR part 200, Subpart 200.9, “General Provisions,” Table 1, “Referenced material,” which include the American Society for Testing Materials procedures, the South Coast Air Quality

Management District methods, the Bay Area Air Quality Management District method, and other updated references to part 205. The EPA is satisfied that the revisions to section 200.9 are appropriate.

V. The EPA’s proposed action

The EPA has evaluated New York’s proposed submittal for consistency with the Clean Air Act, the EPA regulations, and policy. The EPA is proposing to approve revisions to the New York State Implementation Plan (SIP) to include amendment to 6 NYCRR part 205, “Architectural and Industrial Maintenance Coatings,” and attendant revisions to 6 NYCRR part 200, “General Provisions,” with a state effective date of January 11, 2020.⁴ Specifically, this rulemaking proposes to reduce the VOC limit for 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories, and eliminate the quart exemption and bundling of small containers.

The proposed revisions will help the State to comply with federal requirements pertaining to attainment and maintenance of the ozone NAAQS. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to 6 NYCRR part 205, “Architectural and Industrial Maintenance coatings” and 6 NYCRR part 200, subpart 200.9 “General Provisions,” Table 1, “Referenced Materials,” as described in paragraphs III through IV

⁴ Although the NYSDEC exercised its discretion not to enforce the proposed revision of the rule until July 1, 2022, due to the Governor’s emergency declaration as a result of the COVID-19 pandemic, New York has confirmed that the enforcement discretion period concluded, and the rule is being enforced as of July 1, 2022. See the NYSDEC enforcement discretion bulletins, dated December 30, 2020, and December 23, 2021, as well as email correspondence from the NYSDEC’s Robert D. Bielawa, dated July 8, 2022, in the docket.

of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, addressing New York's 6 NYCRR part 205, "Architectural and Industrial Maintenance coatings," is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Lisa Garcia,
Regional Administrator,
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